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SUBJECT: THE PUSH FOR MONEY LAUNDERING LEGISLATION

Summary

¶1. (SBU) Bolivia's current anti-money laundering regime fails to comply with international norms and is ineffective. Based on INL's recommendations, post has encouraged the GOB to enact a comprehensive money laundering law, including terrorism finance provisions, has formed an informal working group led by President Morales' legal adviser Dr. Girona which has met periodically for five months, and has contracted a money laundering expert to push the GOB's draft anti-corruption and money laundering legislation in the right direction. Post has forwarded draft laws on corruption and money laundering, created by the working group, to DEA and to INL for comment by DOJ and GAFISUD (Financial Action Task Force of South America). GAFISUD comments have been received and forwarded to the GOB. However, in the last working group meeting on October 24, Dr. Girona said that he planned to significantly condense the combined corruption and money laundering draft law and put the extracted details into two decrees to be issued by the GOB subsequent to passage of the law. The GOB is focused on anti-corruption; it remains to be seen if the Morales administration has the political will to implement effective, comprehensive money laundering legislation. End summary.

Background

¶2. (SBU) Bolivia's anti-money laundering regime is based on Law 1768 of 1997. That law modified the Penal Code and criminalized money laundering, but only as it relates to narcotics trafficking, organized criminal activities, and public corruption. It does not cover terrorism finance. The law established Bolivia's financial investigation unit (the UIF), within the Office of the Superintendent of Banks and Financial Institutions. Supreme Decree 24471, issued July 31, 1997, set forth the powers and duties of the UIF. Many non-bank financial institutions are not obligated to report to the UIF, and the system has become dysfunctional. To date, there has been only one conviction under Law 1768.

¶3. (SBU) On April 26, 2006, the GOB promulgated Supreme Decree 28695 (Organizational Structure for the Fight against Corruption and Illicit Enrichment). Among a number of other provisions, it referenced (in Article 18) a Financial and Property Intelligence Unit (UIFP) that does not currently exist (but is presumed to mean the UIF in some reconstituted form), while it repealed Supreme Decree 24771 that gave the current UIF its powers. After Embassy legal advisers pointed

out to the GOB that it had effectively put the UIF out of business until it could assume its new mission of "fighting corruption and illicit enrichment," on May 13, 2006, the GOB issued Supreme Decree 28713, restoring the UIF's functions and duties for a period of 240 days (until early January), but moving the unit from the Banking Superintendent to the Ministry of Finance. Presidential Legal Adviser Eusebio Gironda assured Econoff on October 24 that the GOB would issue another decree to extend the UIF if the Marcelo Quiroga Santa Cruz law and corresponding regulations to create the new UIFP were not in place by year-end.

INL Recommendations

¶4. (SBU) Based on Vice President Alvaro Garcia Linera's acceptance of Ambassador Anne Patterson's offer of USG assistance on corruption and money laundering during her visit, corruption and money laundering experts from INL, Diane Kohn and Gary Peters, visited Bolivia in June. Peters met with the presidents of the senate and chamber of deputies, who responded positively to Peters' suggestions to draft comprehensive anti-money laundering legislation. Peters also met with the former director of the Financial Investigation Unit (UIF), Ramiro Rivas. In July, Peters issued an assessment report with recommendations to post. He recommended that NAS hire Rivas and that the GOB form a working group to proceed with AML legislation.

Informal Working Group

¶5. (SBU) An informal working group with Presidential Legal Adviser Dr. Eusebio Gironda, including representatives from NAS, USAID, Checchi (USAID contractor), and Ecopol had begun meeting in May to discuss the decrees concerning the UIF mentioned above. The legal advisor from Checchi produced talking points which helped encourage the GOB to issue a second decree reinstating the UIF after the first decree has disbanded it. Because Dr. Gironda was leading the GOB's push to enact anti-corruption legislation, including anti-money laundering components, this group has continued to meet periodically from June through the present, as convened by Dr. Gironda. Based upon Peters' suggestions, which were made by Ecopol representatives to Dr. Gironda, the meetings were also at times attended by Senate President Santos Ramirez's adviser, Victor Cossio; Ramiro Rivas, whose contract was finalized by NAS in October; representatives from the Finance Ministry, and DEA officials.

Development of Draft Laws

¶6. (SBU) The working group took as its base documents various drafts of the Marcelo Quiroga Santa Cruz (MQSC) Anti-Corruption law, created by the Morales administration, and prior GOB draft money laundering laws from the Finance Ministry and the UIF. The documents were modified by Dr. Gironda, with input from legal advisors from Checchi, USAID, Ramiro Rivas, the Finance Ministry and the UIF to create two draft laws -- one on anti-corruption and one on money laundering. Ecopol forwarded the draft laws to DEA and INL for comment. INL shared the drafts with DOJ and the regional FATF-style body, GAFISUD, for input. GAFISUD comments were received by Ecopol in early November and shared with Dr. Gironda and Senate President Santos Ramirez. Post is waiting to receive comments from DOJ.

Executive Branch Support for AML Weak

¶7. (SBU) Ecopol and NAS, in accordance with Peters' recommendations, have attempted to convince Dr. Gironda that

the GOB should promulgate two laws -- one on anti-corruption and a second on money laundering -- to ensure that Bolivia's money laundering regime is comprehensive and includes terrorism finance. Senator Santos Ramirez has demonstrated some support for a second money laundering law and sent a formal letter to the Embassy in September to request USG support on anti-corruption, illicit enrichment, legitimation of illicit earnings, related crimes, financing of organized crime and terrorism, and observing the recommendations of GAFISUD and UN conventions. However, Dr. Girona, who is close to President Morales and represents the executive branch's view, is adamant that the MQSC anti-corruption law should include money laundering provisions, but not terrorism finance. He stated several times during September and October that the Ministry of Foreign Affairs would send a formal request to the Ambassador for USG assistance outlining the themes the GOB intends to cover; however, post has not received this request. Ecopol and NAS requested this letter to be assured that the administration actually intended to enact comprehensive money laundering legislation. The Embassy is concerned that the executive does not have the political will to back an anti-money laundering law, including terrorism finance provisions. Without executive support, it would be difficult for an AML law to be passed and extremely difficult for it to be implemented.

Draft Law to Be Condensed

18. (SBU) During the working group's last meeting on October 24, Dr. Girona said that some revisions had been made to the MQSC draft law. He said that he was working on condensing the law and would give group members a copy of the updated version at the next meeting, which was originally scheduled for October 31, but was postponed by Girona until November 14. He explained that the details to be extracted would be implemented through regulations and decrees by the GOB after the law was passed by congress. It is unclear what this condensed version will include, but post will forward the draft to INL once it is received. Girona explained that the congressional session had been extended until mid-December and that the GOB wanted to pass the MQSC law by that date. Ramiro Rivas met with Dr. Girona the first week in November. He told Econoff on November 6 that Girona planned to condense the MQSC law and that the GOB would issue two decrees after passage of the law -- one on anti-corruption and one on money laundering. Rivas, in collaboration with Checchi, planned to prepare suggestions for the condensed draft at the next meeting with Girona on November 14.

Comment

19. (SBU) Political leaders and some working group members have expressed concern that the anti-corruption law would be used by the GOB to hunt political enemies. The new UIFP, under the Finance Ministry, should have more teeth than the old UIF, under the Bank Superintendency. This could be positive, because the former UIF was ineffective; however, the UIFP could also be more politicized if it depends on a ministry. Post will continue to seek to positively influence the GOB's legislative process to produce money laundering legislation that conforms with international norms, but is not extremely optimistic about the ultimate outcome. End comment.
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